

WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007  
Harvey R. Miller  
Richard P. Krasnow

Attorneys for Debtors  
and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	
	:
<b>In re</b>	: <b>Chapter 11 Case No.</b>
	:
<b>LEHMAN BROTHERS HOLDINGS INC., et al.,</b>	: <b>08-13555 (JMP)</b>
	:
<b>Debtors.</b>	: <b>(Jointly Administered)</b>
	:
	:
-----X	

**DEBTORS' SUPPLEMENTAL OBJECTION  
TO THE MOTION OF DNB NOR BANK ASA FOR  
(I) RELIEF FROM THE AUTOMATIC STAY TO  
EFFECT SETOFF OR, IN THE ALTERNATIVE, (II) AN ORDER  
REQUIRING THE DEBTORS TO PROVIDE ADEQUATE PROTECTION**

TO THE HONORABLE JAMES M. PECK  
UNITED STATES BANKRUPTCY JUDGE:

Lehman Brothers Holdings Inc. ("LBHI") and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (together, the "Debtors" and, collectively with their non-debtor affiliates, "Lehman"), as and for their supplemental objection (the "Supplemental Objection") to the motion of DnB Nor Bank ASA ("DnB"), filed September 30, 2008 (docket no. 465) (the "Motion"), for relief from the automatic stay to effect setoff or, in the alternative, an order requiring LBHI to provide adequate protection in the above-captioned chapter 11 cases, respectfully represent:

### **Background**

1. By the Motion, DnB is seeking relief from the automatic stay provided for in section 362(a) of title 11 of the United States Code (the “Bankruptcy Code”) to effectuate a setoff to apply the amount in an LBHI deposit account (the “Account”) against an approximate \$25 million claim that DnB asserts it has against LBHI under a credit facility. DnB alleges in its Motion that, prior to the commencement of LBHI’s chapter 11 case on September 15, 2008 (the “Commencement Date”), DnB, as lender, and LBHI, as borrower, entered into a \$25,000,000 Revolving Credit Facility dated March 1, 2008 (the “Credit Agreement”). DnB claims that as of Commencement Date, the amount of the obligations under the Credit Agreement was approximately \$25,071,256.94.

2. Further, DnB alleges in the Motion that, prior to the Commencement Date, LBHI established and maintained the Account, account number 7966.02.01268, at DnB. DnB alleges that the balance in the Account as of the Commencement Date was approximately 106,178,587.92 Norwegian Kroners (“NOK”). Motion ¶¶ 3, 4. DnB claims that it is entitled to setoff 106,178,587.92 NOK against its claim arising under the Credit Agreement in partial satisfaction thereof.

3. In their initial objection to the Motion, dated November 3, 2008 (the “Objection”) [Docket No. #1334], the Debtors objected to the Motion because the Motion contained insufficient information and the Debtors did not possess sufficient information to determine whether all of the funds in the Account were credited prior to the commencement of LBHI’s chapter 11 case.

4. On November 5, 2008, the Court held an initial status conference on the Motion at which time DnB agreed to engage in informal discovery regarding when the deposits

were credited to the Account and make available employees from DnB to answer questions regarding the documents that had been provided or were to be provided and regarding the Account. On or about November 13, 2008, DnB produced various documents regarding the Account, and on November 28, 2008, employees of the Debtors and DnB engaged in informal discussions regarding said documents and the Account. Based on that informal discovery, as demonstrated below, the Debtors have determined that approximately 7 million NOK were credited to the Account subsequent to the commencement of LBHI's chapter 11 case. Such funds and may not, therefore, be subject to setoff.

### **The Deposits, Debits, and Withdrawals**

5. Among the documents that DnB provided to the Debtors was a transaction log (the "Transaction Log"), a copy of which is annexed hereto as Exhibit A. DnB advised the Debtors that the Transaction Log lists the various withdrawals and deposits made to the Account and the date and time at which such transfers were effected. The row corresponding to the column marked Res. No. 060830 on the Transaction Log demonstrates that a transfer in the amount of 98,046,550 NOK was credited to the Account on September 15, 2008 at approximately 6:06 a.m. (Central European Summer Time), which equates to 12:06 a.m. (Eastern Time) on September 15, 2008, less than two hours prior to the commencement LBHI's chapter 11 case at approximately 1:45 a.m. (Eastern Time) See Docket No. 1 and the time stamp of LHBI's petition that is annexed hereto as Exhibit B. The credit of 98,046,550 NOK to the Account and the available balance of 1,221,285.28 NOK at the close of business in Norway on September 12, 2008 resulted in a total available balance in the Account immediately prior to the commencement of LBHI's chapter 11 case of 99,267,835.28 NOK.

6. The Transaction Log also demonstrates that five debits or withdrawals were made from the Account. The rows marked Res. No. 060832, Res. No. 535784, Res. No.

535850, Res. No. 535890, and Res. No. 540311 on the Transaction Log correspond to transfers from the Account that reduced the available prepetition balance in the aggregate amount of no less than 154,598.92 NOK. These debits and withdrawals reduced the prepetition balance available for set off from 99,267,835.28 NOK to 99,113,236.36 NOK.

7. DnB also provided copies of wiring instructions for a transfer in the amount of 6,865,351.56 NOK and another in the amount of 200,000 NOK, which are annexed hereto respectively as Exhibit C and Exhibit D.

8. Page one of Exhibit C reflects that Lehman Brothers Commercial Corporation (“LBCC”) sent the wiring instructions on September 12, 2008 at 5:03 p.m. (Greenwich Mean Time). Page two of Exhibit C reflects that the 6,865,351.56 NOK was not to be debited from LBCC’s account and credited to LBHI’s Account until September 15, 2008.

9. Page one of Exhibit D reflects that LBCC sent the wiring instructions on September 12, 2008 at 5:06 p.m. (Greenwich Mean Time). Page two of Exhibit D reflects that the 200,000 NOK was not to be debited from LBCC’s account and credited to LBHI’s account until September 15, 2008.

10. Notably, the rows corresponding to the column marked Res. No. 541229 and Res. No. 541340 of the Transaction Log confirm that the funds directed by the wiring instructions in Exhibit C and Exhibit D totaling 7,065,351.56 NOK were credited to the Account at 12:54 p.m. (Central European Summer Time), which equates to 6:54 a.m. (Eastern Time), approximately five hours after the commencement LBHI’s chapter 11 case.

**DnB Has Not Met its Burden As to the Postpetition Transfers**

11. DnB claims it is entitled to an order lifting the automatic stay under section 362(d)(1) of the Bankruptcy Code because “its valid, non-bankruptcy offset rights

constitute ‘cause’” for such relief. A conclusory statement that a party has a valid right to a setoff does not make it so and without more certainly does not constitute cause for relief from the automatic stay.

12. The treatment of setoff rights in bankruptcy is addressed in section 553 of the Bankruptcy Code. Section 553(a) of the Bankruptcy Code provides, in relevant part, that:

Except as otherwise provided in this section and in *sections 362 and 363* of this title, this title does not affect any right of a creditor to offset a *mutual debt* owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case. . . .

11 U.S.C § 553(a) (emphasis added).

13. Section 553(a) preserves a creditor’s right to setoff, but only for a “mutual debt owing by such creditor to the debtor that arose before the commencement of the case.” 11 U.S.C. § 553(a). The filing of a bankruptcy petition marks the time at which mutuality ceases; any funds thereafter deposited are considered property of the bankruptcy estate. *In re Springfield Casket Co., Inc.*, 21 B.R. 223, 228 (Bankr. S.D. Ohio 1982) (“In the context of bankruptcy, postpetition debts may not provide the basis for setoff because mutuality ceases upon the filing of the bankruptcy estate.”). Thus, courts consistently hold that banks cannot set off their prepetition claims against amounts debtors deposit in their bank accounts postpetition. *See, e.g., In re Orr*, 234 B.R. 249, 254 (Bankr. N.D.N.Y. 1999) (noting that “it is clear that the right of setoff cannot exist in postpetition deposits.”); *In re Keather*, 208 B.R. 406, 415 (Bankr. S.D. Ohio 1997) (stating that “it is clear that the right of setoff cannot exist in postpetition deposits” and denying bank’s motion to apply amounts deposited in bank account postpetition against prepetition claim).

14. While a bank may place a postpetition administrative freeze on a debtor's bank account without violating the automatic stay, *Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 21 (1995), a bank's failure to do such when it voluntarily releases funds held in a debtor's bank account acts as a waiver to whatever setoff rights it had against the prepetition funds that were debited or withdrawn from the bank account. *Orr*, 234 B.R. at 254.

**Proper Amount of the Setoff**

15. As demonstrated above, no more than 99,113,236.36 NOK of the 106,178,587.92 NOK claimed by DnB to be in the Account as of the Commencement Date were actually credited to the Account prior to the commencement of LBHI's chapter 11 case. DnB's documents clearly demonstrate that the remaining balance of 7,065,351.56 NOK were not credited to the Account until after LBHI commenced its chapter 11 case. Accordingly, no mutuality exists with respect to the approximate 7 million NOK DnB is seeking to setoff against its prepetition claims. *See Orr*, 234 B.R. at 254; *Keather*, 208 B.R. at 415; *Springfield Casket*, 21 B.R. at 228. Any reliance on the fact that the instructions in Exhibit B and Exhibit C to wire the approximate 7 million NOK were transmitted prior to the commencement of LBHI's chapter 11 case is unavailing. In its Motion, DnB did not supply nor have the Debtors found any cases standing for the proposition that a bank may setoff against funds credited to an account after the petition merely because the wiring instructions were sent prior to the petition date. Without mutuality, section 553(a) of the Bankruptcy Code prohibits DnB from setting off against the 7,065,351.56 NOK.

16. Accordingly, while the Debtors are prepared to consent to the modification of the automatic stay under section 362(a) of the Bankruptcy Code for the exclusive purpose of permitting DnB to setoff its obligations to the Debtors arising under the Account

against the Debtors' obligations to DnB under the Credit Agreement in amount equal to 99,113,236.36 NOK less any postpetition deposits, debits, or withdrawals to or from the Account. DnB should be directed to transfer the remaining funds in the Account as directed by LBHI.

### **The Adequate Protection**

17. At the November 5, 2008 status conference on the Motion, DnB and the Debtors stipulated on the record that DnB would be permitted to convert the NOK in the Account into United States dollars ("USD") as adequate protection against currency fluctuations. The relevant portion of the November 5, 2008 transcript is annexed hereto as Exhibit E. Since the status conference on the Motion, the value of the NOK as of November 6, 2008 has depreciated. Notwithstanding its authorization to convert the NOK and its obligation to mitigate its claim against LBHI, DnB failed to convert the NOK into USD. As of November 6, 2008, if the funds available for setoff had been converted into USD they would have been valued at approximately \$14,453,881 based on a conversion rate of 1 NOK to .145832 USD. As of the date hereof those same funds are valued at approximately \$13,988,148 based on a conversion rate of 1 NOK to .141133 USD. Thus, DnB's failure to convert the NOKs as it sought and obtained the authority to do has prejudiced LHBI's estate and its creditors. Accordingly, the Debtors reserve their rights to object to DnB's deficiency claim based upon, *inter alia*, DnB's failure to convert the funds on November 6, 2008.

WHEREFORE the Debtors respectfully request that the Court (i) to deny the Motion in part insofar as it seeks to setoff against the entire 106,178,587.92 NOK in the Account, (ii) grant the Motion in part to permit DnB to setoff against the 99,113,236.36 NOK,

less any subsequent debits or withdrawals, (iii) direct DnB to transfer the 7,065,351.56 NOK and in other funds remaining in the Account upon the direction by LBHI, and (iv) grant the Debtors such other and further relief as may be just.

Dated: December 2, 2008  
New York, New York

/s/ Richard P. Krasnow  
Harvey R. Miller  
Richard P. Krasnow  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

Attorneys for Debtors  
and Debtors in Possession

**EXHIBIT A**  
**(Transaction Log)**

Encl. 3.

7966.02.01268 LBHI

TRA DATE	TIME	RES. NO	TYPE	SYS	RS	TRAN AMOUNT	DISP AFTER	TIMESTAMP	PROD	VAL	TRANSREF	VALUE DATE
12.09.2008	15.32.28	322802	0050	794	00	34,074,353.96	65,147,131.32	2008-09-12-15.32.28	DE8	13251	NOK 00018360	12092008
12.09.2008	15.32.28	322803	0120	794	00	34,074,353.96	99,221,485.28	2008-09-12-15.32.28	DE8	13140	NOK 234NEW206113	12092008
12.09.2008	15.56.25	562598	0050	234	00	98,000,000.00	99,221,485.28	2008-09-12-15.56.25	DE8	13140	NOK 234NEW206113	12092008
12.09.2008	15.56.25	562600	0100	234	00	98,000,000.00	1,221,485.28	2008-09-12-15.56.25	DE8	13140	NOK 234NEW206113	12092008
12.09.2008	15.56.26	562609	0050	234	00	98,046,550.00	1,221,485.28	2008-09-12-15.56.26	DE8	13140	NOK 234NEW206113	12092008
12.09.2008	15.56.26	562610	0120	234	00	98,046,550.00	99,268,035.28	2008-09-12-15.56.26	DE8	13220	NOK 00001318	15092008
15.09.2008	06.06.08	060830	0050	794	00	1,500.00	99,267,835.28	2008-09-15-06.06.08	DE8	13220	NOK 00001318	15092008
15.09.2008	06.06.08	060832	0100	794	00	1,500.00	99,266,335.28	2008-09-15-06.06.08	DE8	13251	NOK 00018276	15092008
15.09.2008	12.53.57	535782	0050	794	00	35,148.00	99,231,187.28	2008-09-15-12.53.57	DE8	13251	NOK 00018277	15092008
15.09.2008	12.53.57	535784	0100	794	00	35,148.00	99,231,187.28	2008-09-15-12.53.57	DE8	13251	NOK 00018277	15092008
15.09.2008	12.53.58	535848	0050	794	00	70,296.00	99,231,187.28	2008-09-15-12.53.58	DE8	13251	NOK 00018277	15092008
15.09.2008	12.53.58	535850	0100	794	00	70,296.00	99,160,891.28	2008-09-15-12.53.58	DE8	13251	NOK 00018278	15092008
15.09.2008	12.53.58	535888	0050	794	00	43,430.00	99,160,891.28	2008-09-15-12.53.58	DE8	13251	NOK 00018308	15092008
15.09.2008	12.53.58	535890	0100	794	00	43,430.00	99,117,461.28	2008-09-15-12.53.58	DE8	13251	NOK 00018308	15092008
15.09.2008	12.54.03	540309	0050	794	00	4,189.92	99,117,461.28	2008-09-15-12.54.03	DE8	13251	NOK 00018308	15092008
15.09.2008	12.54.03	540311	0100	794	00	4,189.92	99,113,271.36	2008-09-15-12.54.03	DE8	13251	NOK 00018372	15092008
15.09.2008	12.54.12	541228	0050	794	00	6,865,351.56	99,113,271.36	2008-09-15-12.54.12	DE8	13251	NOK 00018372	15092008
15.09.2008	12.54.12	541229	0120	794	00	6,865,351.56	105,978,622.92	2008-09-15-12.54.12	DE8	13251	NOK 00018374	15092008
15.09.2008	12.54.13	541339	0050	794	00	200,000.00	105,978,622.92	2008-09-15-12.54.13	DE8	13251	NOK 00018374	15092008
15.09.2008	12.54.13	541340	0120	794	00	200,000.00	106,178,622.92	2008-09-15-12.54.13	DE8	13251	NOK 00018374	15092008

34

3.1

for DMB NOR BANK ASA

**EXHIBIT B**

**(Time Stamp of LBHI's Petition)**

MIME-Version:1.0  
From:nysbinfo@nysb.uscourts.gov  
To:courtmail@localhost.localdomain  
Bcc: harvey.miller@weil.com  
Message-Id:<6989459@nysb.uscourts.gov>  
Subject:08-13555 Voluntary Petition (Chapter 11)

Content-Type: text/html

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\* You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

**U.S. Bankruptcy Court**

**Southern District of New York**

**Notice of Bankruptcy Case Filing**

The following transaction was received from Miller, Harvey R. entered on 9/15/2008 at 1:45 AM and filed on 9/15/2008

**Case Name:** Lehman Brothers Holdings Inc.

**Case Number:** 08-13555

**Document Number:** 1

**Docket Text:**

Voluntary Petition (Chapter 11). Order for Relief Entered. Filed by Harvey R. Miller of Weil, Gotshal & Manges, LLP on behalf of Lehman Brothers Holdings Inc.. (Miller, Harvey)

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**C:\Documents and Settings\staublec\Desktop\Lehman Brothers Holdings Inc\_Petition\_#1915514.PDF

**Electronic document Stamp:**

[STAMP NYSBStamp\_ID=842906028 [Date=9/15/2008] [FileNumber=6989457-0]  
[1e355305d71bbaae0b660416e6aad9503d9ed61ad241545fd8cf19232cec7994cfed  
4bcd0b7695d80fea320eba616a82803512d2e7293d3eed72888cb512aa6]]

**08-13555 Notice will be electronically mailed to:**

Harvey R. Miller harvey.miller@weil.com

**08-13555 Notice will not be electronically mailed to:**

United States Trustee  
33 Whitehall Street  
21st Floor  
New York, NY 10004

**EXHIBIT C**

**(6.8 Million NOK Wiring Instruction)**

Page: 1 Document Name: untitled

PMMS S PP View Electronic Message

08.10.30 12:34 3R3O  
DNNO 7966 AD30887 D-I

Sender : SLHIUS3NXXX Medium : SWIFT Format: 202 Prio: N  
Receiver : DNBANOKCXXX TRN/MsgId: FX143039500  
Reg. Date/Time: 080912/1703 SRC : 080912SLHIUS3NAXXX4133875495

Delivery time from SWIFT: 080912/1703

\* LEHMAN BROTHERS COMMERCIAL CORPORAT  
\* NEW YORK

108 SLIIGB2L/24217

20 FX143039500

21 REF FX

32A 080915 NOK 6.865.351,56

53B /70020241134

56A DNBANOKKXXX

\* DNB NOR BANK ASA

\* OSLO

57A /7966 02 01268

SLHIGB2HXXX

\* LEHMAN BROTHERS HOLDING INC UK BRAN

\* LONDON

58A SLIIGB2LXXX

\* LEHMAN BROTHERS INTERNATIONAL (EURO

\* LONDON

-

MAC 8C19F267

CHK 16E005DC5B56

Tran : \_\_\_\_\_ Key : \_\_\_\_\_ Sys : \_\_\_\_\_

Page 001 of 002

Page: 1 Document Name: untitled

PMFT S PP Financial Transfer Select 08.10.30 12:34 3R30  
DNNO 7966 AD30887 D-I  
Exdate 2008-09-15 Pay-ID : 7966XXF00018372 Status: F Screen 01 of 07  
Rout : Reverse :  
SdBIC< SLHIUS3NXXX NatID < Setl. N M:  
Name LEHMAN BROTHERS COMMERCIAL CORPORAT NEW YORK  
DbBIC< SLHIUS3XXXX NatID < Deb.Mech<  
LEHMAN BROTHERS INC. NEW YORK  
DbAcc< 70020241134 E Prio : N  
LEHMAN BROTHERS INC. LEHMAN BROTHERS  
ReCur< NOK Amount: 6.865.351,56 DebVal: 0915 E CreVal : 0915 S  
  
CLBIC< Nat-ID < RT :  
Name  
AWBIC< SLHIGB2HXXX Nat-ID < E RT :  
Name LEHMAN BROTHERS HOLDING INC UK BRAN 25, BANK ST  
  
BNBIC< SLIIGB2LXXX Nat-ID < E RT :  
Name LEHMAN BROTHERS INTERNATIONAL (EURO 25, BANK STREET  
  
Banks SLHIGB2HXXX SLIIGB2LXXX  
Fld 72

TRN FX143039500 Rel TRN: REF FX Advice ind: N  
Debit NOK 6.865.351,56 CreMech< CORR S RT :  
Credit NOK 6.865.351,56 CreAcc : 79660201268 M  
LEHMAN BROTHERS HOLDING INC U  
RegUsr SWIFT VerUsr : SWIFT SWIFT 2008-09-12  
Msg< \_ Evnts< \_ Procs< \_ Comm< \_ Auth< \_ PMRF< \_ PMAI< \_ PMAT< \_ Claim< \_  
Tran : \_ Key : \_ Sys : \_ Pr: FT EXTRFO BAS

**EXHIBIT D**

**(200,000 NOK Wiring Instruction)**

PMMS S PP View Electronic Message

08.10.30 12:33 3R30  
DNNO 7966 AD30887 D-I

Sender : SLHIUS3NXXX Medium : SWIFT Format: 202 Prio: N  
Receiver : DNBANOKCXXX TRN/MsgId: FX143543658  
Reg. Date/Time: 080912/1706 SRC : 080912SLHIUS3NAXXX4133875567

Delivery time from SWIFT: 080912/1706

\* LEHMAN BROTHERS COMMERCIAL CORPORAT  
\* NEW YORK  
108 SLIIGB2L/24291  
20 FX143543658  
21 REF FX  
32A 080915 NOK 200.000,  
53B /70020241134  
56A DNBANOKKXXX  
\* DNB NOR BANK ASA  
\* OSLO  
57A /7966 02 01268  
SLHIGB2HXXX  
\* LEHMAN BROTHERS HOLDING INC UK BRAN  
\* LONDON  
58A SLIIGB2LXXX  
\* LEHMAN BROTHERS INTERNATIONAL (EURO  
\* LONDON  
-  
MAC AA881C3E  
CHK B94C4621FF6C

Tran : \_\_\_\_ Key : \_\_\_\_\_ Sys : \_\_\_\_

Page 001 of 002

PMFT S PP Financial Transfer Select 08.10.30 12:36 3R30  
DNNO 7966 AD30887 D-I  
Exdate 2008-09-15 Pay-ID : 7966XXF00018374 Status: F Screen 01 of 07  
Rout : Reverse :  
SdBIC< SLHIUS3NXXX NatID < Setl. N M:  
Name LEHMAN BROTHERS COMMERCIAL CORPORAT NEW YORK  
DbBIC< SLHIUS3XXXX NatID < Deb.Mech<  
LEHMAN BROTHERS INC. NEW YORK  
DbAcc< 70020241134 E Prio : N  
LEHMAN BROTHERS INC. LEHMAN BROTHERS  
ReCur< NOK Amount: 200.000,00 DebVal: 0915 E CreVal : 0915 S  
  
ClBIC< Nat-ID < RT :  
Name  
AWBIC< SLHIGB2HXXX Nat-ID < E RT :  
Name LEHMAN BROTHERS HOLDING INC UK BRAN 25, BANK ST  
  
BNBIC< SLIIGB2LXXX Nat-ID < E RT :  
Name LEHMAN BROTHERS INTERNATIONAL (EURO 25, BANK STREET  
  
Banks SLHIGB2HXXX SLIIGB2LXXX  
Fld 72

TRN FX143543658 Rel TRN: REF FX Advice ind: N  
Debit NOK 200.000,00 CreMech< CORR S RT :  
Credit NOK 200.000,00 CreAcc : 79660201268 M  
LEHMAN BROTHERS HOLDING INC U  
RegUsr SWIFT VerUsr : SWIFT SWIFT 2008-09-12  
Msg< \_ Evnts< \_ Procs< \_ Comm< \_ Auth< \_ PMRF< \_ PMAI< \_ PMAT< \_ Claim< \_  
Tran : \_ Key : \_ Sys : \_ Pr: FT EXTRFO BAS

**EXHIBIT E**

**(November 5, 2008 Transcript)**

1

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 08-13555

5 - - - - -x

6 In the Matter of:

7

8 LEHMAN BROTHERS HOLDINGS, INC., et al.

9

10 Debtors.

11

12 - - - - -x

13

14 United States Bankruptcy Court

15 One Bowling Green

16 New York, New York

17

18 November 5, 2008

19 10:02 AM

20

21 B E F O R E:

22 HON. JAMES M. PECK

23 U.S. BANKRUPTCY JUDGE

24

25

LEHMAN BROTHERS HOLDINGS INC., et al.

1 action settlements of a certified class action entitled  
2 "Austin, et al, v. Chisick". The parties have agreed to put  
3 that over for November 18th, Your Honor.

4 THE COURT: There's also a number on there carried --

5 MR. MILLER: I'm sorry?

6 THE COURT: Number 42 on the next page.

7 MR. MILLER: I'm sorry, Your Honor. That is the  
8 debtors' motion, Your Honor, to pay pre-petition excise and  
9 withholding taxes. We have agreed -- there's an objection  
10 filed, Your Honor, by the Walt Disney Company. We've agreed to  
11 discuss that with the Walt Disney Company and bring it back on  
12 November 18th.

13 THE COURT: Fine.

14 MR. MILLER: We can go to the contested matters, Your  
15 Honor, which relate to Lehman Brothers Inc., et al. and then go  
16 to LBI, Lehman Brothers Inc., if that's --

17 THE COURT: Fine.

18 MR. MILLER: -- agreeable to Your Honor.

19 THE COURT: That's agreeable.

20 MR. MILLER: Okay. The first contested matter, Your  
21 Honor, is the motion of DNB Bank ASA for stay relief or, in the  
22 alternative, an order requiring the debtors to provide adequate  
23 protection. This relates, Your Honor, to a deposit of  
24 approximately 18.5 million dollars. It's actually in Swedish  
25 krona, Your Honor. And the moving party would like to have the

LEHMAN BROTHERS HOLDINGS INC., et al.

1 stay lifted. We are in negotiations, Your Honor, to try and  
2 resolve this matter. The debtors are agreeable to the  
3 conversion of the krona into U.S. dollars to protect it against  
4 deterioration in value. The parties have agreed that there  
5 should be final hearing on December 3. In the interim, there  
6 would be expedited discovery to see if this matter can be  
7 resolved and then bring it forward to December 3 which I think  
8 is an omnibus hearing date, if I recall correctly, Your Honor,  
9 if it can't be resolved prior to that date. I don't know if  
10 counsel is here --

11 MR. UZZI: Your Honor, pardon me, Gerard Uzzi of  
12 White & Case on behalf of DNB NOR Bank. That, for the most  
13 part, accurately reflects our agreement, Your Honor, with one,  
14 I think, nuance. The next omnibus hearing date is November  
15 14th --

16 THE COURT: November 18th.

17 MR. UZZI: 18th, I'm sorry, 18th. I think both  
18 parties want to work toward getting to a final hearing if we  
19 need a contested hearing, an evidentiary hearing by the 18th.  
20 We're using the 3rd as a fallback in the event that we can't  
21 get it done by the 18th. But our hope would be that we resolve  
22 this consensually by the 18th, that the parties are ready to go  
23 forward on the 18th. If we haven't otherwise resolved it  
24 consensually, then we will want to go forward on the 18th as a  
25 final hearing.

LEHMAN BROTHERS HOLDINGS INC., et al.

1 THE COURT: I don't think you mean the 18th. Maybe I  
2 misunderstood you. I thought that this was being put off to a  
3 possible hearing on the 3rd. What happens on the 18th?

4 MR. UZZI: It's really being put off, Your Honor, to  
5 the 18th but there's a recognition that my client's in Norway,  
6 the debtors may want to take some discovery. And if we're  
7 unable to resolve the matter consensually, either on the merits  
8 or with respect to providing discovery so that the parties are  
9 ready to go forward on the 18th, we've agreed that we would  
10 then adjourn it to the 3rd. But if no event would we adjourn  
11 it later than the 3rd so that we would have the final hearing  
12 on the 3rd.

13 THE COURT: All right. Well, here's my take-away  
14 from this.

15 MR. UZZI: Yes.

16 THE COURT: If you have a consensual resolution, it  
17 can be approved on the 18th. Otherwise, there will be a  
18 hearing on the 3rd. But since you don't control the calendar,  
19 you can't tell me that that's the last permissible date. It  
20 will be ultimately up to me when this happens.

21 MR. UZZI: Understood, Your Honor.

22 THE COURT: Okay.

23 MR. UZZI: And I didn't mean to imply otherwise. I  
24 just meant the agreement between the parties.

25 THE COURT: Okay. I understand the agreement. Okay.

LEHMAN BROTHERS HOLDINGS INC., et al.

1 MR. UZZI: And then just, Your Honor, the -- we are -  
2 - we've reached an agreement also on adequate protection, as  
3 Mr. Miller said, that my client can convert the krona account  
4 to U.S. dollars at its discretion in order to protect it  
5 against currency fluctuations. And we're fine with that being  
6 just a memorialization on the record, Your Honor. But if Your  
7 Honor would prefer a written order on that, we would be happy  
8 to submit a written order also.

9 THE COURT: Well, it's up to you as to how much  
10 protection you want as you convert kronas into dollars. I  
11 assume with the consent of Mr. Miller on behalf of the estate  
12 and with your stating the intention to do it as a form of  
13 adequate protection, I'm confident that you're free to proceed  
14 without further documentation. But if, for your own  
15 protection, you want that documentation, go right ahead and  
16 produce it.

17 MR. UZZI: No, that's fine, Your Honor. We just want  
18 to make sure the Court was aware.

19 THE COURT: I understand. Thank you.

20 MR. UZZI: Thank you. May I be excused, Your Honor?

21 THE COURT: You may.

22 MR. UZZI: Thank you.

23 MR. MILLER: I just want to make clear, Your Honor,  
24 to get to a resolution on November 18th depends upon expedited  
25 discovery. And as counsel pointed out, because the moving

LEHMAN BROTHERS HOLDINGS INC., et al.

1 party is in Sweden, there may be some delay. That's why we did  
2 that backup.

3 MR. UZZI: We're fine with expedited discovery.

4 THE COURT: Is it Norway or is it Sweden?

5 MR. UZZI: It's Norway, Your Honor.

6 MR. MILLER: I'm sorry. Scandinavia, Your Honor.

7 THE COURT: Okay. Fine.

8 MR. MILLER: And in one election and the dollar  
9 suddenly became a solid currency. Your Honor, the next matter  
10 is the cash management order. Mr. Perez will handle that.

11 MR. PEREZ: Good morning, Your Honor. Alfredo Perez.  
12 Your Honor, there's a footnote on the G-IV sale motion that I  
13 neglected to tell Mr. Miller. And that is there's a footnote 8  
14 in the supplemental motion that talks about rights and  
15 obligations being assigned. And that is a little incorrect.  
16 The purchaser -- Pegasus is obligated to pay the money. They  
17 will then assign the right to take the liberty of the contract  
18 but they're not assigning the obligation to pay. And I just --  
19 I told the creditors' committee I would put it on the record  
20 and I just wanted to make sure that that was on the record.

21 THE COURT: Okay. Fine.

22 MR. PEREZ: Thank you, Your Honor.

23 THE COURT: Now we'll proceed with what you stood up  
24 to talk about.

25 MR. PEREZ: I apologize.